IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.279 OF 2007

Gracy Ambat ..Appellant.

V/s.

The Municipal Council of Gr.Bombay ..Respondent.

Mr.Trupti Rangnekar for appellant.

Mrs.Geeta Joglekar for respondent.

CORAM : ABHAY S.OKA, J.

DATED : 11th APRIL, 2007.

P.C. :-

Heard the learned advocate for the appellant. The appellant is original plaintiff who has taken exception to the order dated 3rd April, 2007 passed by the learned Judge of the City Civil Court, Bombay whereby a prayer for ad interim injunction made by the appellant has been rejected.

2. It will be necessary to refer to the facts of the case in brief.

The dispute in the appeal relates to a small structure admeasuring 3’8" x 2’6". It is not in dispute that in respect of the very structure, a show cause notice dated 2nd May, 2003 was issued by the respondent Corporation under section 351 of the Mumbai

Municipal Corporation Act, 1888 (hereinafter referred to the ‘said Act’). It is also not in dispute that on the basis of the said notice,an order of demolition was passed by the respondent corporation on 30th May, 2003. The appellant filed a L.C. Suit No.206 of 2003 before the trial Court for challenging the said notice and order passed by the respondent Corporation. By order dated 20th November, 2003 the learned trial Judge made the Notice of Motion for temporary injunction in the said suit absolute. The respondent Corporation preferred appeal from order No.737 of 2004 for challenging the said order passed in Notice of Motion. By Judgment and order dated 19th October, 2006 this Court allowed the said appeal. This Court recorded that the suit structure was demolished on 13th June, 2003 and was again reconstructed by the appellant within a period of one year from the date of demolition. This Court permitted the respondent Corporation to demolish the said structure after giving a short notice of 24 hours to the appellant. It appears that after the said order was passed by this Court, the earlier suit filed by the appellant was unconditionally withdrawn. On 12th March, 2007, notice of 24 hours was issued by respondent Corporation to the appellant calling upon the appellant to demolish the said structure. The present suit is filed for

challenging the earlier order passed under section 351 of the said Act of 1888 as well as the notice dated 12th March, 2007 issued by the respondent.

3. Learned counsel for the appellant relied upon clause (iv) of the paragraph 19 of the decision of the Division Bench of this Court in **Shri Sopan Maruti Thopte & Anr. V/s. Pune Municipal Corporation & Anr. [1996(2) All MR. 383]**. She submitted that the respondent Corporation is entitled to give a short notice of 24 hours provided the structure is found to have been reconstructed without valid permission within a period of one year from the date of demolition of the earlier structure made after following due process of law. Her submission is that from 30th May, 2003 the respondent Corporation did not give time of 15 days as contemplated by the said decision and the structure was demolished on 13th June, 2003. She, therefore, submitted as the structure was not demolished 15 days after the date of service of the order of demolition, it cannot be said that the structure was demolished after following the due process of law. It is, therefore, submitted that clause (iv) of the said decision of the Division Bench was not applicable in the present case and the structure cannot be demolished by giving only a 24 hours notice.

4. I have considered the submissions. In earlier suit filed by the appellant, there was a specific challenge to the order dated 30th May, 2003 passed under section 351 of the said Act. The said suit was unconditionally withdrawn. Therefore, it was not open for the appellant to file a fresh suit for challenging the same order.

5. It is true that the said structure was demolished before the expiry of the period of 15 days from the date of service of order dated 30th May, 2003. However, this aspect has been gone into by this Court while deciding the Appeal from Order No.737 of 2004. In paragraph 8 of the Judgment dated 19th October, 2006, it is held as under:-

> " In the present case, as I have held that the respondent has re-erected the suit pan stall within one year of its demolition on 13th June, 2004 it would be open to the Municipal Corporation to demolish the same after giving a short notice of 24 hours. For these reasons the appeal is allowed. The impugned order is set aside. The appellant Municipal Corporation shall, without prejudice to its any other remedies is allowed to demolish the suit pan stall after giving to the respondent a short notice of 24 hours. "

6. In view of what is held by this Court, the respondent Corporation has issued 24 hours notice. In

view of what is held by this Court in the aforesaid Judgment, it cannot be said that the action of the respondent Corporation of giving 24 hours notice is illegal.

7. There is another aspect of the matter. The challenge to action under section 351 of the said Act has been given up by the appellant by withdrawing the earlier suit unconditionally. The suit structure was demolished after following the due process of law. The suit structure was re-erected by the appellant without obtaining permission of the respondent Corporation. Considering this conduct of the appellant, the learned trial Judge was justified in declining to grant equitable and discretionary relief of injunction in favour of the appellant.

8. Therefore, there is no merit in the appeal and the same is dismissed.

9. The learned advocate for the appellant prays that the said structure may be protected for a reasonable time to enable the appellant to adopt appropriate remedy. The said prayer is opposed by the learned counsel for the respondent.

10. Considering the facts and circumstances of the case, parties will maintain status quo as of today in respect of the said structure for a period of 5 weeks from today.

(ABHAY S. OKA, J.)